

**Department of Conservation
California Abandoned Mine Lands Forum
801 K Street
Sacramento, CA 95814**

**August 24, 2005
Final Meeting Notes**

Facilitator and Meeting Summary: Mary Kay Lahay, Lahay & Associates

Attendees:

1. Steve Becker, DTSC	14. Kim Schwab, Dept Conservation
2. Sandy Karinen, DTSC	15. Becky Wood, Teichert
3. Randy Adams, DTSC	16. Sandra Lunceford, Tech Law, Inc.
4. Glenn Baumann, Tehachapi rep	17. Cheryl Closson, Dept of Conservation
5. Eugene Mullenmeister, Shaw E&E	18. Robert Foun, Amador County
6. Curtis Lindskog, Shaw E&E	19. Patrick Morris, Central Valley Reg Water
7. David Lawler, BLM	20. Jason Muir, Holdrege & Kull
8. Carol Russell, Trout Unlimited	21. Clayton Haas, Dept. of Conservation
9. Russ Schnitzer, Trout Unlimited	22. Dave Buck, Placer County
10. Doug Craig, Dept of Conservation	23. Tracy Gidel, Nevada County
11. Greg Reller, Tetra Tech	24. Rick Weaver
12. Cy Oggins, CA Lands Commission	
13. Tom Fillert, CA Lands Commission	

Agenda:

- I. Welcome, Introductions and Agenda Review
- II. New AML Forum Charter
- III. Future Forum Meeting Process and Topics
- IV. DTSC Presentation: Defining Key Terms and Language of Border Zone Statute
- V. Border Zone Next Steps Discussion
- VI. Funding High Priority Projects Discussion
- VII. Next Meeting

Meeting:

I. Welcome, Introductions and Agenda Review

Sarah Reeves kicked off the meeting and welcomed AML Forum attendees. Mary Kay Lahay, the group's new facilitator, introduced herself and asked for a quick introduction (name/agency) from each of the participants as well, since some were first-time attendees. Participants also circulated the attendance sheet to help update the AML master list records. The agenda was reviewed and no changes were made. Lahay then moved to the first agenda item.

II. Final Charter for AML Forum

Most members had read the draft document in advance so facilitator Lahay walked through each section taking questions and/or suggested revisions. The group spent most of their time refining language in the sections on Forum Purpose and Authority. The proposed changes to the Charter (listed below) will be made and the final draft Charter sent out to the full Forum membership: Forum members also had questions about the proposed AML Forum membership structure so Lahay outlined how the Guiding Committee might work and asked for volunteers to serve on the initial Guiding Committee. Ideally, it will be maintained as a balance of public and private sector representatives. Initial Guiding Committee members include:

1. David Lawler, BLM;
2. Curtis Lindskog, Shaw Environmental;
3. Greg Reller, Tetrattech
4. Possibly Janine Clayton (she did not attend but Rick Weaver agreed to ask if she would be willing to participate)
5. Sarah Reeves, Dept. of Conservation
6. Mary Kay Lahay, AML Forum Facilitator

Lahay also helped the group see that to make substantive progress on some of the issues or topics they've surfaced would likely require the use of ad hoc small teams to work between the quarterly full Forum meetings.

Changes for the Final Draft charter:

1. Under Forum Purpose, change item #2 from "high priority areas of concerns" to "high priority areas identified by the group"
2. Under Forum Purpose, change item #4 from "Serve as a collective advocate for a" to "Support"
3. Include a definition of what is a consensus for the group's decision making.
4. We need to make sure that the minority viewpoints are addressed in the charter.
5. Under Authority, remove the reference to the Department of Conservation and replace with "The participating agencies retain...."
6. A few people volunteered to be part of the Guiding Committee:

Other Suggestions that came up during this discussion:

1. Possibly having an update newsletter that the group produces 1-2 times a year with the current state of the abandoned mine issues in California.
2. Sarah asked the group if anyone would want to volunteer to host a future Forum meeting at their facility. Several people volunteered, including:
 - a. David Lawler, BLM
 - b. Patrick Morris, RWQCB
 - c. Curtis Lindskog, Shaw Environmental
 - d. Cy Oggins, State Lands Commission
 - e. Tracy Gidel, Nevada County
 - f. Becky Woods, Teichert

III. Future Forum Meeting Process and Topics

Lahay quickly reviewed the group's previous discussion on moving the meeting design from mostly presentations to one that includes problem solving or work on specific common issues. The job aid handed out included Guidelines for writing a good 'problem definition statement' and several topics the group had surfaced earlier as possible targets for future group action sessions. They are listed below along with new topics (in bold) proposed by the group today. Finally the group felt strongly *not to focus solely* on problems, but equally on presentations of successful approaches to technical work so others can learn from best practices.

Priority topics for future AML Forum meetings: (not in any order)

1. Currently, there is a shortage of reliable contractors with the expertise needed to work on abandoned mine remediation projects. This results in project delays as well as cost overruns. How can this group help ensure a sufficient supply of expert and reliable contractors?
2. Many agencies currently do not have the resources in-house to do the NEPA or CEQA work necessary for their projects, creating a barrier to the pace and/or completion of some projects. How can this group help to resolve this issue?
3. Should future funding become available, California's primary agencies concerned with abandoned mine remediation work do not have a common agreement on a list of the most important projects to fund. This may jeopardize California's ability to respond quickly to information requests or offers of funding from other entities. Can this group come to consensus on general priorities and complete more project scope detail for those priorities in advance of the notice of funds?
4. Could this group help to create common job aids/procedural support documents for use by cities and counties in their technical mine investigational work?
5. **Abandoned Mine Liability** still has not been adequately addressed in order for entities to perform remediation or restoration work. Curtis Lindskog brought up another aspect of the liability issue: many abandoned mine operators had insurance policies that can still be traced and found today (possible new responsible parties?)

Brownsfield Conference: Carol Russell announced a Brownfields Conference in Denver on November 1st that will include a lot of discussion of abandoned mines and liability issues. Contact Carol at 303-312-6310 or visit www.epa.gov/brownfields for more information.

6. **Good Samaritan Law:** What are the key elements of the Good Sam Legislation that this group believes California should adopt? The group discussed several states with current laws that might warrant review. The group also wanted to assemble some key experts (such as Western Governors Association, etc.) Meanwhile, specific sample legislation will be gathered and provided as member pre-work before the next Forum meeting:
 - CA Water Code Provision (will be provided by Greg Reller, Tetratex),
 - PA's Good Sam Law (will be provided by Russ Schnitzer, Trout Unlimited)
 - Several congressional Good Sam Leg attempts made by Baukus and Udall (will be provided by Sarah Reeves, DOC).

➔ **Action Item:** Greg Reller, Russ Schnitzer and Becky Wood volunteered to help plan the next Forum meeting on this topic.

7. **Access to private property sites** for inventory and ultimately remediation is difficult for some agencies to achieve. There are also issues with mixed ownership between private and public lands.
8. **Look at refining the current databases** and improving data consistency and therefore comparability between agencies. Agencies have different databases and methodology for collecting the data. Is there a way to form a clearinghouse for this information?

IV. Border Zone Definitions presented by Sandy Karinen

This agenda item was a follow-up to Tracy Gidel's presentation at the last Forum meeting on his challenges with finding good data to help identify Border Zone issues. The group had discussed several 'next steps' to take after Tracy's presentation, but decided they first needed more clarity from DTSC on the actual meaning and/or intent of certain statutory language. Sandy Karinen of DTSC provided a handout with definitions, the Statutory Process, and the general steps for completing a Border Zone Property (BZP) Determination. She then went through it in detail with the group.

Additional notes about the handout and questions asked and answered were as follows:

Under Definitions:

1. **Hazardous Waste Property (HWP):** With respect to the second portion of the definition (not referring to permitted facilities), a "HWP" is not officially a "HWP" until it has gone through a formal designation process which includes a public hearing. Past uses of a "source" site that could trigger the need to seek a HWP determination, and, therefore, consider the need to look at BZP include landfills, storage facilities that might have contained hazardous wastes or substances, manufacturing plants that may have generated hazardous wastes (even if not permitted), etc.
2. **Border Zone Property:** The definition uses the term "designated" which means that a public hearing has occurred and a formal determination has been rendered by DTSC and a written, signed deed restriction on the property (limiting the future use of that property to non-sensitive uses, i.e., only industrial/commercial) has been filed with the applicable county recorder's office and thus designating the specific property as a BZP. The deed restriction "runs with the land" and can only be removed by applying to DTSC through a formal process set out in the statutes.
3. **Land Use Restrictions example:** deed restrictions
4. **Determination:** a formal written decision rendered by DTSC on the property which does not include a public hearing
5. **Designation:** a formal written decision by DTSC, following a public hearing, which includes the implementation of a land use restriction (deed restriction)

Q: What is significant? A: The term "significant" is not specifically defined in the law, but has been interpreted to mean that the "source site" of the "significant disposal of hazardous waste" poses a risk to human health and the environment based on a health risk evaluation. In other words, the risk assessment addresses the potential exposure pathways from the "source site" to the future residents on the proposed development site.

Q: Funding issues have interfered with enforcement of this Statute. If funding becomes available for more enforcement, will the DTSC retroactively pursue BZP determinations on land that has been developed? A: Sandy was not prepared to answer at this time, but she mentioned that the intent of the law was to focus on future development and that there are enforcement provisions available within the statutes that an impacted party could pursue if they feel that they have been impacted.

Q: How can we determine when to do a determination with the quality of the datasets in the office? A: You should not rely simply on a review of datasets. You need to physically visit the site before proceeding and especially before you decide to apply for a determination. The border zone property statutes became effective in 1981 and are applicable for proposed new development or a change in land use from prior industrial/commercial uses to proposed sensitive uses (residential, schools, children's day care, etc.). If the property has been developed after 1981 (involving sensitive uses only), then a determination could be requested retroactively. There have been no retroactive requests to date.

V. Border Zone Next Steps Discussion: Tracy Gidel mentioned that Nevada County developed a flier that is handed out to anyone seeking a building permit from the County. Disclosure is required to be made by the Real Estate Industry. Carol Russell mentioned the lead disclosure required by Real Estate Agents does not apply exclusively to lead-based paints.

Lahay reminded the group of some of the ideas from its last meeting, where a possible joint meeting with California realtor associations, etc. was discussed. Someone else mentioned that making mortgage companies aware of the BZP issue may be useful since they have a tendency to reject loans if the property has a potential to lose value.

During this meeting, additional ideas were kicked around, including pursuing possible funding by the Realty Board and other stakeholders of improvements to databases that could be used to more easily determine potential border zone properties. Some suggestion that arose for the current database that exist on mines:

- Expand the databases so that certain criteria can be used to make a decision on whether a determination is warranted.
- Look at the possibilities for creating a clearinghouse for this data
- Carol Russell mentioned that the USGS has lots of history on mining districts and some geo-environmental models

Action Item: The group wants to start first with an informal discussion of the issue before any additional funds are sought. A mention was made that the California Association of Realtors are meeting next month in San Diego, CA. **An ad hoc group was developed** to pursue this as a first step. The members of this group are: Dave Lawler, BLM; Sandy Karinan, DTSC; Tracy Gidel, Nevada County.

VI. Funding of High Priority Projects

A suggestion came up in the May meeting about developing a priority list of projects that are ready to go as soon as the funds become available. The funds in question are the RAMS (Restoration of Abandoned Mine Sites) funds. Doug Craig took a few minutes to describe what the RAMS program is about and the recent changes in the language (summarized below):

The RAMS program was created in 1999 as part of the WRDA (Water Resources Development Act, Section 560). The main purpose of the program was to provide technical planning and design assistance to agencies for the reclamation of abandoned non-coal producing mines. The initial appropriation for this program was 5 million dollars to be split between the non-coal producing states. The RAMS funding has a match requirement for non-federal interests, currently 50%, while the federal cost share is 100%. The initial authorization was later increased by \$2.5 million. By obtaining a state-specific appropriation for RAMS dollars, Nevada was able to \$1 million of the added authority. It is generally felt that obtaining a state-specific RAMS appropriation is the best way for states to secure future RAMS funding. Having projects ready would help make the argument that RAMS funds should be earmarked for California.

The RAMS program was recently reauthorized (but not appropriated) as part of the 2005 WRDA bill. Some of the proposed changes include:

- The ability to spend the funds on construction as well as the planning
- The ability to spend the funds on physical hazard remediation

- The non-federal cost share was decreased to 25%
- The requested amount of funds is 45 Million dollars (to be split between states)

Last year, the ACOE asked the DOC for projects that could be funded by RAMS. DOC asked federal and state agencies in California to submit projects. These projects were forwarded to the ACOE, but no clear priority for them was established. The Department would like guidance from Forum participants on how they would like to see projects prioritized. How do we want to approach establishing prioritization criteria? Things to keep in mind:

- Agencies have their own criteria for prioritizing projects and in some case have already generated a list or multiple year plans for these projects...
- The WGA had a “Dirty Thirty” priority projects list (mentioned by Carol Russell) and all of the project were successfully funded.
- Criteria exist for projects dealing with water quality in the Bay Delta (Prop 13 funds)
- We need to find a balance between water quality projects and physical hazard projects.

➔ **Action Item:** An ad hoc group was formed to include the following agencies: BLM, USFS, SLC, Parks and Rec, US Fish and Wildlife, DFG, BOR, DOC. Sarah will make contact and set up the initial meeting.

Meeting Evaluation:

Pluses (what we liked about meeting)	Deltas (improvements or changes)
<ul style="list-style-type: none"> ▪ We had a great amount of discussion vs. presentations ▪ DTSC’s information on Border Zone laws ▪ Good facilitation, kept us on track 	<ul style="list-style-type: none"> ▪ We need to prioritize topics and issues remaining for other future meetings ▪ Ad hoc report outs should be at summary level, with pre-reading to maximize good discussion at the group meeting

Next Meeting scheduled for Wednesday, November 16, 2005 from 9 a.m.-12 noon at **a new location!!**. Our host for the November meeting is the Central Valley Regional Water Quality Control Board's Office in Rancho Cordova. When we send out the agenda, we’ll include a map.